IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11187 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHANKERBHAI MANILAL RANA

Versus

DIST. HEALTH OFFICER DELETED AS PER ORDER DTD.8/7/02.

Appearance:

1. Special Civil Application No. 11187 of 2001

MR PH PATHAK for Petitioner No. 1

DELETED for Respondent No. 1

MS SEJAL K MANDAVIA for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 22/07/2004

ORAL JUDGEMENT

1.0 The petitioner herein has challenged the impugned

action on the part of the respondents, whereby fresh inquiry was ordered to be initiated against the petitioner vide order dated 22/10/01, the period of suspension of the petitioner was not regularised and for not granting any consequential benefits to the petitioner.

2.0 The petitioner joined the respondent Department as a Compounder w.e.f. 01/01/79. The petitioner was placed under suspension vide order dated 21/07/88 on the ground that criminal complaint was pending against. He was continued under suspension w.e.f. 23/06/88. The Criminal Court acquitted the petitioner from the said criminal complaint vide order dated 25/06/90. As the petitioner was acquitted by the Criminal Court, the order of suspension was revoked by order dated 17/10/92 and the petitioner joined the services w.e.f. 20/10/92.

2.1 Charge sheet was issued against the petitioner on 25/01/93 and departmental inquiry was initiated against him. In the report submitted by the Inquiry Officer it was stated that the charges levelled against the petitioner were not proved. Therefore, the charge sheet was withdrawn by order dated 18/04/2000. After the withdrawal of the charge sheet by the Disciplinary Authority, the petitioner made representations pointing out that the period in question i.e. the suspension period, may be regularized and the pay may be fixed accordingly. As no fruitful result was available, Notice was issued through an Advocate to the respondents on 18/12/2000.

2.2 By order dated 22/10/01 fresh inquiry was ordered to be initiated against the petitioner by respondent no.2. The new Inquiry Officer was to be appointed from the Office of the Development Commissioner, Gandhinagar. The petitioner has challenged the said order of respondent no.2 initiating fresh inquiry against him.

3.0 Mr.P H Pathak for the petitioner has submitted that the petitioner has already been exonerated from the allegations of 1979 - 1982. Therefore, on the basis of earlier findings there cannot be any de novo inquiry against the petitioner. He has further submitted that in view of the law laid down by the Apex Court in State of Andhra Pradesh v. N.Radhakishan reported in A.I.R. 1998 SC 1833, it has been held that the Court has to take into consideraation all the relevant factors and has to balance and weigh them, in order to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate

after delay, particularly when delay is abnormal and there is no explanation for the delay. Therefore, in view of the law laid down in the aforesaid decision, the initiation of further proceedings against the petitioner is required to be quashed and set aside.

4.0 Ms.Sejal Mandavia for respondent no.2 has submitted that in the earlier proceedings the petitioner was given the benefit of doubt in the criminal proceedings against him and the Department could not prove the charges because of the lack of evidence. But now as the original record is available with the Department, it will be appropriate to allow the Department to proceed in the departmental proceedings.

5.0 I have heard the learned advocates for the parties and have gone through the averments made in the petition. The contention raised by Ms.Mandavia that fresh inquiry can be initiated against the petitioner in view of the availability of original record cannot be accepted as the petitioner was already exonerated by the competent authority and the findings of the Inquiry Officer was accepted by the Disciplinary Authority. Therefore, the Development Commissioner cannot initiate de novo inquiry against the petitioner. Even otherwise, in view of the law laid down in State of Andhra Pradesh v. N.Radhakishan (supra), the respondents cannot be allowed to proceed further. Therefore, the order of the Development Commissioner, initiating fresh inquiry against the petitioner, is required to be quashed and set aside as this is a stale case.

6.0 For the foregoing reasons, this petition is allowed. The order of the Development Commissioner dated 22/10/01 at Annexure 'F' to the petition is quashed and set aside. The respondents are directed to regularize the period of suspension of the petitioner and are further directed to pay all the consequential benefits to the petitioner within a period of four months from the date of receipt of this order. Rule is made absolute with no orders as to costs.

(K. S. Jhaveri, J.)

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